IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.2941 OF 2006

South Eastern Carriers Pvt. Ltd. ...Applicant

Versus

The State of Maharashtra ...Respondent

Shri R.B.Parab holding for K.Balakrishnan for the Applicant.

Shri S.R.Borulkar, A.P.P for the Respondent.

CORAM : A. S. OKA, J.

DATE : DECEMBER 13, 2006.

P.C.:

1. Rule. The learned A.P.P waives service for the Respondent. Taken up for hearing forthwith considering the facts and circumstances of the case.

2. The challenge in this Application under section 482 of the Code of Criminal Procedure, 1973 is to an order made on 06th May, 2006 by the learned Sessions Judge, Raigad at Alibag.

3. The Applicant-Company is the carrier of goods. According to the Applicant-Company it has a contract with IPCL for transporting the goods of IPCL from one place to another. The IPCL had instructed the

Applicant to transport goods known as "plastic dana" from village Nagothane in Raigad district to Gaziabad in State of Uttar Pradesh. Accordingly, on 06th October, 2005 the Applicant-Company loaded total 1120 plastic bags of the goods in two trucks at Nagothane. It was revealed that the trucks did not reach the destination till 11th October, 2005 and therefore, a complaint was lodged by the Applicant with the concerned Police Station against the drivers of the trucks. The police arrested the accused and recovery of 797 bags loaded in truck was made during the investigation. The orders were passed by the learned Magistrate for returning the bags to the Applicant. A condition was imposed by the learned Magistrate not to transfer, sell or make any changes in the goods without prior permission of the court. According to the Applicant, the goods were required to be used as early as possible and therefore, a revision Application was filed before the Sessions Court for challenging condition imposed by the learned Magistrate. The case of the Applicant is that IPCL deducted the cost of the goods amounting to Rs.21,02,801/- by debiting the said amount to the account of the Applicant. Debit advise has been annexed to this Application.

4. By the impugned order dated 06th May, 2006, the learned Sessions Judge directed the Applicant to return property to the Investigating Officer and to get itself discharged from the conditions of supratnama. The learned Sessions Judge directed that three samples of the goods be taken on random basis each weighing one kilogram and samples shall be sealed in presence of panchas. The learned Judge directed that the one sample shall be retained by the Investigating Officer, the second will be delivered to the concerned court and the third will be allowed to be retained by the Applicant. The learned Judge directed that after taking samples, the rest of the goods be sold by public auction by the Investigating Officer and the sale proceeds shall be invested in fixed deposit.

5. The learned Advocate for the Applicant submitted that except IPCL no one else had any right, title and interest in respect of goods and no one has claimed custody of goods. He submitted that IPCL has already recovered the value of the goods from the Applicant by debiting necessary amount to the account of the Applicant. He submitted that the learned

Magistrate had already permitted the Applicant to take custody of the goods. However, in revision Application preferred by the Applicant, the said order in favour of the Applicant has been set aside. He submitted that the order passed by the Sessions Court is illegal. The learned A.P.P supported the impugned order by pointing out that the goods will be sold by public auction and price fetched in public auction will be secured by keeping the same in fixed deposit.

6. I have considered the submissions. Considering the facts and circumstances of the case, I find no error in the direction issued by the learned Sessions Judge to the Applicant to deliver goods to the Investigating Officer. Even the direction for sale of goods in public auction after taking samples is proper. However, prima facie, the Applicant is entitled to the said goods. No one else had claimed the goods. Interests of justice will be met if the price of the goods sold in public auction is allowed to be withdrawn by the Applicant on furnishing adequate security for the amount to the satisfaction of the learned Magistrate and subject to filing appropriate bond.

7. Hence, I pass the following order:

(i) Sub-clause (c) of clause (1) of the operative part of the order dated 06th May, 2006 is modified. It is directed that the price of the goods sold in public auction will be paid by the concerned officer to the Applicant only after the Applicant furnishes to the court of the learned Magistrate an adequate security for the said amount to the satisfaction of the learned Magistrate and after the Applicant furnishes appropriate bond as may be required by the learned Magistrate.

(ii) Rest of the impugned order is confirmed.

(iii) The auction will be completed within a period of six weeks from the date on which an authenticated copy of this order is produced by the Applicant.

(iv) Parties and the concerned authorities to act upon an authenticated copy of this order.

JUDGE